IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1557

NACHMAN CORPORATION,
Petitioner
v.

PENSION BENEFIT GUARANTY CORPORATION,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT PENSION BENEFIT GUARANTY CORPORATION

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

ACTS OF CONGRESS AND REGULATIONS CITED

INDEX OF AUTHORITIES—Continued

CASES CITED

OTHER AUTHORITIES

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* Throughout this brief, the following abbreviations will be used: "Op." will refer to the Opinion of the Court of Appeals; page references will be to the reprinting of that opinion in the Petition for a Writ of Certiorari in this case. "A." will refer to the record appendix in this case. "Pet. Br." will refer to the brief of petitioner Nachman Corporation. "Concord Br." will refer to the brief *amicus curiae* filed by Concord Control, Inc. "ERISA" or "the Act" will refer to the Employee Retirement Income Security Act of 1974, P.L. No. 93-406, 88 Stat. 829 (1974), 29 U.S.C. §§ 1001-1381 (1975). "Leg. Hist." will refer to the three-volume legislative history of ERISA (GPO, 1976); all citations to bills, debates, and committee reports will be to this compilation. We will refer to sections of the Act as they appear in the statute rather than as they appear in Title 29 of the United States Code. "Title IV" will refer to §§ 4001-4082 of ERISA.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether a benefit payable to a pension plan participant is "nonforfeitable" within the meaning of Section 4022(a) of the Employee Retirement Income Security Act, and thereby guaranteed by the Pension Benefit Guaranty Corporation, where the participant has satisfied by the date of the plan's termination all the conditions required of him under the terms of the plan to be entitled to the benefit, notwithstanding the inclusion in the plan of provisions which limit payment of benefits to the assets of the pension plan and relieve the employer of liability for unfunded benefits.

COUNTERSTATEMENT OF THE CASE

A. The Statutory Framework of this Action.

This case involves the pension plan termination insurance program established by Title IV of ERISA. Title IV established a program to insure the payment of certain pension benefits (defined in § 4022 of the Act) upon the termination of covered pension plans, in the event that a pension plan is funded insufficiently to pay such benefits. Such payments are guaranteed by the Pension Benefit Guaranty Corporation (hereafter "PBGC"), a government corporation established under § 4002 of the Act.

Section 4062 of the Act imposes liability on employers to reimburse PBGC. This is an action by petitioner Nachman, an employer which terminated a pension plan covered by Title IV, against respondent PBGC for a judgment declaring that Nachman is not liable under § 4062.

B. The Factual Background.

We adopt the Court of Appeals' statement of the case:

> Pursuant to collective bargaining with the UAW, in 1960 Nachman established a pension plan for certain employees at its Armitage Avenue facility in Chicago. The plan terms provided for vesting of benefits after employees fulfilled specified age and length-of-service requirements. This pension plan is characteristic of "defined-benefit" plans, promising a fixed monthly benefit level for each year of service. As is typical of a defined-benefit plan, Nachman was required to make annual contributions to a trust fund on an actuarial basis. Those contributions were calculated by reference to administrative costs of the fund, benefit liabilities accruing during the current plan year ("normal costs"), and the amounts necessary to amortize the past service liability over thirty years. The parties do not dispute that Nachman complied fully with the funding obligations imposed by the plan.
>
> On October 1, 1975, Nachman gave timely notice to the UAW that it was terminating the pension plan effective December 31, 1975. The termination accompanied the closing of the Armitage Avenue facility, which had become unprofitable. The propriety of the termination is not challenged.
>
> It is also undisputed that the assets in the trust fund are insufficient to pay all the vested benefits which accrued before December 31, 1975. Apparently the fund assets can provide only thirty-five percent of the accrued vested benefits. Under the terms of the plan, the employees' benefits would be reduced ratably. Nachman would not be obligated to assume liability for the unfunded benefits. Article V, section 3 of the plan provides:

> Benefits provided for herein shall be only such benefits as can be provided by the assets of the Fund. In the event of termination of th[e] Plan, there shall be no liability or obligation on the part of the company to make any further contribution to the Trustee except such contributions, if any, as on the effective date of such termination, may then be accrued but unpaid.

Op. 2-3 (footnote omitted).

C. Proceedings Below.

Nachman brought an action for declaratory relief to determine whether Title IV imposes liability on it under § 4062 of the Act. The United States District Court for the Northern District of Illinois granted summary judgment in Nachman's favor, 436 F. Supp. 1334 (N.D. Ill. 1977), holding that Congress did not intend until January 1, 1976, to subject employers to liability for unfunded pension benefits which they had disclaimed. Since Nachman terminated the pension plan prior to that date, it was found not subject to statutory liability.

The Court of Appeals for the Seventh Circuit reversed, 592 F.2d 947 (7th Cir. 1978). In an opinion written by Judge Sprecher, the court held unanimously that because the participants' pension benefits were unconditionally vested under the terms of the Nachman pension plan, those benefits were "nonforfeitable" within the meaning of § 4022 of the Act and, therefore, guaranteed by PBGC. Accordingly, the court held that Nachman was liable under § 4062 of the Act. Op. 7-18. The court held further that Title IV did not violate the Due Process clause of the Fifth Amendment because it is a rational means to a legitimate end. Op. 19-29.

On June 18, 1979, this Court granted *certiorari* limited to the question of whether the Court of Appeals' interpretation of the statute was correct,[1] —— U.S. ——, 99 S. Ct. 2881 (June 18, 1979).

SUMMARY OF ARGUMENT

A. As a result of almost a decade of study, Congress identified some serious defects in the private pension system. ERISA was the legislative response. Particularly serious, in Congress' view, was that the promise of a pension often turned out to be illusory for either of two reasons: (1) The standards of eligibility were so restrictive that only a small minority of employees ever qualified for a pension; and (2) pension plans terminated because of plant closings or for other reasons with insufficient assets to pay the benefits which the plan participants had earned.

Congress addressed the first of these problems by establishing minimum standards on vesting, participation and other plan terms in Titles I and II of the Act. It responded to the second problem by providing in Title IV for a separate plan termination insurance program whereby a government corporation (PBGC) would guarantee benefits which are "nonforfeitable . . . under the terms of a [pension] plan." § 4022(a). In order to protect this insurance system and to help finance it, Title IV also provides that employers should be liable to PBGC for the amount of insufficiency, up to 30 percent of the employer's net worth.

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[1] *Amicus* Concord seeks to inject a constitutional issue. Concord Br. 8. In denying *certiorari* on the constitutional issue, this Court had before it the well-reasoned opinion of the Court of Appeals which dealt at length with constitutionality and the arguments in PBGC's Brief in Opposition to *certiorari*, pp. 7-14. This Court limited review to the question of statutory interpretation. Therefore, we will limit our response to the scope of the grant of *certiorari*.

The vesting and funding standards, which require extensive adjustments to ongoing plans, became effective (with exceptions not relevant here) for plan years beginning after December 31, 1975. The termination insurance program became effective immediately upon the enactment of ERISA, *i.e.*, September 2, 1974. The issue in this case is whether benefits are guaranteed by ERISA where a plan terminates with insufficient assets to pay benefits which had "vested in a contractual sense," Pet. Br. 28, but before the effective date of the vesting and funding standards, where the terms of the plan limited payment of benefits to the assets available in the plan.

Petitioner's position, that benefits which were "vested in a contractual sense," Pet. Br. 28, under its plan are not "nonforfeitable" and not insured under Title IV, would effectively reverse the Congressional judgment that such benefits should be insured from the date of enactment. Petitioner's position that plan provisions which limit recovery of benefits to the assets of a plan are contrary to the statutory vesting standards, and thus were banned when those standards became effective in 1976, could subject employers to liability greater than Title IV imposes. (Clearly there is no such ban; a current IRS model plan includes similar provisions.) Thus, petitioner's position bears no rational relationship to the Congressional design, *i.e.*, either for employees or for employers.

B. Congress was well aware that pension plan participants and beneficiaries who lost benefits because a plan was insufficiently funded on termination had no recourse against their employers. Congress found that the typical pension plan included language disclaiming the employer's liability beyond contributions to the plan, and provided that participants could look only to the assets of the fund for payment. Congress chose not to declare such disclaimers contrary to public policy, but rather to insure, through PBGC, pension benefits which were lost

on plan termination. § 4022(a). And in § 4062 it imposed liability to the PBGC on employers as described above. The statutory liability does not create a contractual obligation to the plan on the part of employers, but was designed to reimburse the PBGC, within limits, for the liabilities it incurs. In sum, as the Court of Appeals said, "the purpose of Title IV was to guarantee benefits that might be lost because of employer liability disclaimers." Op. 14.

C. Petitioner's interpretation of "nonforfeitable" [2] cannot be squared with the statutory priorities which the administrator of an defined benefit plan must follow in allocating the assets of a plan on termination. Section 4044(a), the mandatory allocation provision, recognizes by its very terms that "nonforfeitable" benefits include some which the plan does not have adequate assets to provide on termination. If benefits were "nonforfeitable" only if there are sufficient assets to pay them in the event of termination, there would be no need to establish an order of priority among "nonforfeitable" benefits for the allocation of the plan assets.

Petitioner's interpretation also conflicts with the funding requirements of Titles I and II. Those provisions allow the funding of promised benefits to be amortized over 30 to 40 years. § 302 of ERISA and I.R.C. § 412 (added by ERISA). These sections anticipate that nonforfeitable benefits may be underfunded at termination, and thus belie petitioner's contention that "full funding" is a condition of nonforfeitability.

D. Congress carefully and deliberately chose to make the termination insurance program effective on date of

[2] Nachman contends that a benefit cannot be considered "nonforfeitable" under Title IV if its payment is conditioned upon the availability of assets. Pet. Br. 16.

enactment, *i.e.*, September 2, 1974. Indeed, the PBGC was to pay benefits with respect to certain plan terminations occurring after June 30, 1974. Employer liability under § 4062 came into effect with the Act, but PBGC was given discretion for the first 270 days to waive or reduce such liability "to avoid unreasonable hardship [where] the employer was not able, as a practical matter, to continue the plan." The vesting and funding requirements of Titles I and II did not go into effect with respect to existing plans until January 1, 1976, with exceptions not relevant here. The purpose of the 16-month delay was to allow time to amend plans to comply with the new vesting, funding, and participation requirements.

E. PBGC promulgated its definition of "nonforfeitable" for purposes of § 4022(a) pursuant to its statutory authority. The definition of that term is at the heart of PBGC's mission because PBGC cannot guarantee the payment of "nonforfeitable" benefits without being able to determine what those benefits are. Given that responsibility, PBGC's view, embodied in 29 C.F.R. § 2605.6(a), "is a substantial factor to be considered in construing the statute", *Miller* v. *Youakim*, 440 U.S. 125, 144 (1979), particularly since it is a "contemporaneous construction of the statute by the men charged with the responsibility of setting its machinery in motion," *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294, 315 (1933).

The Title I definition is not binding for purposes of Title IV because it was adopted only "for purposes of this Title . . . ," *i.e.*, Title I. Titles II and IV contain their own definition sections, each of which repeats some, but not all, of the definitions which are set forth in § 3 of Title I. *E.g.*, § 4001(a)(1) of Title IV defines "administrator" as "the person or persons described in paragraph (16) of § 3 of this Act." Congress would not have expressly incorporated a particular Title I definition

into Title IV if it had understood that the Title I definition "necessarily applied to the other Titles." Pet. Br. 19.

F. Nachman cannot prevail even under the Title I definition of "nonforfeitable" in § 3(19). The Court of Appeals properly found that § 3(19)'s requirements that participant claims be "unconditional" and "enforceable against the plan" were met here. The Court said, "Nachman's employees' claims are enforceable against the plan, they simply may not be collectable." Op. 9. It ruled also that "unconditional" refers only "to those conditions placed on the participant and not to sufficiency of assets," citing leading authority for the proposition that under pre-ERISA terminology pension rights were not considered to be conditional even though they were contingent upon the availability of assets. Op. 9.

Nachman seeks support for its interpretation of "nonforfeitable" in the use of that term in the Internal Revenue Code prior to ERISA. But its examples concern disposition of funds at termination. The issue here is whether nonforfeitability is incompatible with a shortfall of funds at termination. The Internal Revenue Code provisions cited add nothing on this point.

ARGUMENT[3]

A. Introduction

Petitioner Nachman has totally misconceived the statutory design and the unmistakable Congressional intent of ERISA. The Court of Appeals declared that petitioner's theory[3] would import so narrow a purpose to Congress as to make the enactment of Title IV "almost meaningless." Op. 14. The Court of Appeals is right.

Congress studied private pension plans comprehensively during ERISA's decade-long gestation period. Congress found that employers held out to employees the hope of security on retirement through a variety of voluntarily adopted contractual arrangements. Actual results of the pre-ERISA system were not satisfactory, in Congress' view. The promises employees thought had been made to them often did not result in benefit payments.

Congress identified two distinct situations which led to those frustrated employee expectations. One occurred where under the terms of the plan, workers did not acquire enforceable claims despite long years of employment. Some plans, for example, did not provide benefits unless an employee remained on the job until retirement. The result of such arrangements was a high proportion of forfeitures, disappointment for many employees, and comparatively low cost for the sponsors.

The second situation arose when employee claims against a plan could not be realized because the plan

[3] Pursuant to Title III of ERISA, this brief has been submitted to the Department of the Treasury for review, and Treasury concurs in the positions taken in this brief. This brief has also been reviewed by the Department of Labor, and Labor also concurs in the positions taken in this brief.

terminated, bringing into operation typical plan provisions that expressly limited recourse by participants for satisfaction of claims to the funds then in the plan and generally barred recourse against the sponsor. Too often, the result was that benefit payments were a small fraction of the anticipated benefits. Employer-sponsors were generally protected against liability.

Although both problems arise from enforcement of plan terms, they differ in one important respect. The rules that affect an ongoing plan have their impact over a period of time. Termination, on the other hand, immediately seals the financial fate of participants and sponsor alike.

Congress dealt with the two problems differently. The remedy for over-restrictive rules of ongoing plans[4] is in Titles I and II. As before the Act, plan terms govern the basis on which employees acquire claims for benefits. Congress set minimum standards for key plan terms, such as the vesting of rights. After a certain date, every plan must have provisions that meet or exceed the ERISA standard.[5] The minimum standards reflected Congressional balancing between greater satisfaction of employee expectations and the retention of flexibility and protection for sponsors. The minimum standards are lengthy and complex. Congress knew that amending plans to conform to these standards would be a difficult process, complicated by the perceived need for Internal Revenue Service review to assure continuance of preferred tax treatment. For practical purposes, all tax-qualified plans needed conforming amendments and IRS clearance. Thus,

[4] These included participation and vesting rules that often resulted in forfeitures.

[5] The vesting standard sets out three acceptable schedules for granting vested rights; plan provisions would have to match or exceed at least one of them. § 203. The counterpart to this section in the Internal Revenue Code is I.R.C. § 411.

a grace period was essential before this remedy could go into effect. Congress made the standards effective for plan years beginning after December 31, 1975, about 16 months after passage of ERISA. Although some employees were significantly affected by this delay—*i.e.*, those who left a plan during that interim period without the entitlements that plan provisions conforming to the new minimum standards would provide—Congress knew that the great bulk of participants would not be affected. Such participants would still be in the plan when the new rules went into effect, and would benefit from them when their claims for benefits ripened.

Congress had a different solution for the problem of plan termination rules that insulated sponsors and left benefit claims unsatisfied.[6] No changes in plan terms were mandated. Instead, in Title IV Congress enacted a statutory scheme, operating outside the contractual context of the plan, to change the effect of plan termination on participants and sponsors. A new fund supported by premiums paid by defined benefit pension plans, a new agency (PBGC), and a new set of rules of law were created. Under this scheme, the employee's satisfaction of plan conditions for entitlement to benefits is the starting point. PBGC guarantees what the plan defines as the employee's benefit, with certain limitations. The difference between that guarantee and plan funds available at termination may be collected from the sponsor by PBGC, again with significant limitations.

Nothing in this Title IV scheme makes illegal the usual clauses protecting the employer against liability. Removal of those legal protections would have placed

[6] Congress imposed minimum funding schedules, in Titles I and II, to decrease the likelihood that plans would terminate with insufficient funds and leave employee claims unsatisfied. Because these schedules extend 30 years or longer, they do not deal adequately with the problem of terminations with insufficient funds.

employers even more at risk, for claims could then lie against sponsors for amounts which might exceed PBGC guarantees, and without limits that the statute places on PBGC.

The reasons that dictated a grace period for minimum standards were not present here. No plan amendments were required. Only a minority of plans, those that terminated, would feel the force of the new termination law. More important, as the legislative history bears out, there was a strong impetus to make termination insurance effective as soon as possible. Accordingly, Title IV of ERISA was made effective on the date of enactment, September 2, 1974, with exceptions not pertinent in this case. The Act even covered some plan terminations that occurred up to two months earlier.

The PBGC Title IV regulation defining nonforfeitability carries out faithfully the statutory scheme for termination insurance. In this case, it would be applied to determine the nonforfeitable rights of employees. Within statutory limits, guarantees would be extended to those employees.

Nachman's theory bears no relation to the rational, balanced scheme devised by Congress. Instead of focusing on plan terms which measure the claims participants had against the plan, Nachman asserts that plan terms which limit the liability of the employer are dispositive. It was to provide protection for employees notwithstanding those limitation of liability clauses that Congress enacted Title IV. Acceptance of Nachman's position would effectively reverse that Congressional judgment, at least for plans terminating prior to 1976.

Nachman's theory is equally untenable when examined in relation to plan years after the 1976 effective date of minimum standards for vesting and related plan terms. Nachman claims that limitation of liability clauses are

illegal after that time, by operation of the minimum standards. If that were so, employers could be subject to far greater liability than is now the case. In fact, there is no such ban on clauses of the type found in Nachman's plan. Such a protective clause is even found in a model plan issued by the IRS for guidance in drafting post-1976 plans. 1977 *Pension Plan Guide* (CCH ¶ 30,782.96). The same arguments against Title IV coverage made here would apply to any plan with such a clause, so that the true effect of a finding for Nachman on the grounds it advances would be to eviscerate Title IV.

B. Congress Established the Termination Insurance Program of Title IV to Ameliorate the Loss of Earned and Promised Pensions When Plans Terminated with Insufficient Assets and Employers Had Disclaimed Liability.

Congress enacted Title IV to reduce the frustration and human tragedy that had too often resulted from the termination of pension plans with insufficient assets. Congress found "that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." § 2(a). Congress responded "by requiring plan termination insurance." § 2(c).

One of the major causes for loss of anticipated benefits which had been identified in nearly a decade of Congressional study was the termination of pension plans with insufficient assets to fund the promised benefits. Typically, pension plans, like Nachman's, limited participant recovery to plan assets and freed the employer from any liability other than contributions due to the plan. Pre-ERISA courts normally enforced this disclaimer language and defeated participant expectations. As Senator Williams, the Chairman of the Senate Committee on Labor and Public Welfare, said at the beginning of the debate on the pension reform bill reported by that committee: "Another reason why so many employees have found their pension expectations to be illusory is that the employer may shut down, and if there are insufficient funds to meet the vested claims of the participants, *they have no recourse.*" II Leg. Hist. 1599 (emphasis added).

To remedy this situation, Congress chose not to void such exculpatory language in pension plans, which would have increased the risk of a direct cause of action against employers by participants. Rather, Congress created a statutory scheme independent of the fortuities of plan drafting.

Title IV of ERISA created a government corporation, the PBGC, § 4002, and charged it with the duty of "guarantee[ing] the payment of all nonforfeitable benefits . . . under the terms of the plan . . ." upon termination. § 4022(a). The measure of guarantee was derived from "nonforfeitable benefits . . . under the terms of the plan," but Congress imposed limitations on the guarantee to participants.[7] § 4022(b). Another provision, § 4062, entitles PBGC to a claim against employers, based on the value of PBGC's guarantee, but again there are statutory limitations, of which the most significant is that PBGC may not recover more than 30 percent of the employer's net worth. § 4062(b).

As Senator Williams stated in explaining the conference report on ERISA to his Senate colleagues, the Act accomplishes what both Houses had originally intended;[8]

[7] The guaranty is limited to "basic" benefits, subject to a maximum benefit payment, and generally reduced on a phased basis for benefits in force less than five years. § 4022(b).

[8] A plan termination insurance program had been included in each of the Pension Reform Bills that was reported in either the Senate or the House, except those of the House Ways & Means Committee, which expressly approved the insurance provisions of the House Labor Committee's bill. II Leg. Hist. 2619 and 3150.

And while a minority in the House Labor Committee (including Representative Erlenborn) urged in the Committee report that the

it guarantees vested pension rights against the possibility of loss upon plan termination:

> While the funding provisions are designed to assure that sufficient assets are available to a plan to pay benefits when due, experience has shown that participants and beneficiaries, even in well-funded plans, may lose vested rights when a plan terminates because of plant closure or other reasons.
>
> Accordingly, the conference substitute, as did the Senate and House bills, establishes an insurance program to protect employees against the loss of vested benefits in the event of plan termination.
>
> [III Leg. Hist. 4741]

We have set forth in Appendix A to this brief some of the major statements in the debates and in committee reports which show that Congress regarded the loss of vested pension benefits on termination to be, in the words of Senator Bentsen, "a great personal tragedy," III Leg. Hist. 4793, which Congress needed to remedy by the termination insurance program. But it bears special emphasis, because of the nature of petitioner's argument, that as the Court of Appeals observed, Congress so legislated cognizant "of the fact that the standard private pension plan prior to ERISA disclaimed employer liability." Op. 14-15.

The Court of Appeals cited Representative Annunzio [9]

insurance program be stricken from the bill, II Leg. Hist. 2387-2388, they did not press the issue on the House floor, but sought to alter certain elements of the program, in respects not pertinent here. III Leg. Hist. 3523-3526.

[9] I think it is unconscionable that an employer is presently under no legal obligation to make good on his pension promise. With the exception of collectively bargained plans, an employer can alter, modify, or terminate a pension plan at any time—and for any reason. Moreover, he generally reserves the right to suspend, reduce, or discontinue payments to the plan—whether

and Representative Erlenborn,[10] a member of the House Committee on Education and Labor. Op. 15, n. 14.

The Court of Appeals also quoted the Interim Report of the Senate Subcommittee on Labor:

> The need for or desirability of insurance arises because of the numerous contingencies which can result in . . . termination . . . . Employers ordinarily have no financial responsibility for pension payments beyond the contributions they are committed to make.[11]

or not previous payments have been sufficient to provide all benefits earned to date. In other words, Mr. Chairman, if the pension plan is terminated, the participants and beneficiaries can only look to the accumulated assets in the pension fund for the satisfaction of their claims. Simply stated, if the assets are insufficient, claims cannot be met in full. Is that any way to run a retirement program?

[II Leg. Hist. 3479]

[10] Termination insurance holds out the hope that everyone who participates in a pension plan will get the full pension that is offered to him or that has been promised to him. It has some hazards, however.

The only way that one can make termination insurance something other than a dumping ground for the obligations of the employer is to put some sort of obligation on the employer. At the present time the legal foundation of pension plans is that the employer sets up a pension trust and promises to make periodic contributions into that trust. If there are sufficient assets, the employee will get the pension that has been described; if there are not, he does not get it; he gets something less. But the employer up until the present time generally has not made a promise to pay the pension, only to make periodic contributions.

[II Leg. Hist. 3388]

Representative Erlenborn feared that changing the "basic legal obligation of the employer" would discourage the creation of new defined benefit pension plans, III Leg. Hist. 3389; see also the Supplemental Views of Representative Erlenborn and four others, II Leg. Hist. 2387-2388, quoted at Op. 18. Of course, the obligation to which he referred is the obligation to the PBGC, not to the plan.

[11] Op. 16, citing Interim Report of Activities of the Private Welfare and Pension Plan Study, Senate Committee on Labor and Public Welfare, Subcommittee on Labor, 92nd Cong., 2d Sess., 74 (1972).

The court also cited sources which informed Congress that pension plans sought to protect employers by limiting recourse for benefits to the pension fund and precluding claims against solvent employers; a celebrated example was Studebaker. Op. 15-16.

Consequently, the Court of Appeals properly concluded: "The purpose of Title IV was to guarantee benefits that might be lost because of employer liability disclaimers." Op. 14. Although neither petitioner, nor *amicus* Concord, disputes that proposition anywhere in their briefs, their legal theory cannot be reconciled with that Congressional purpose, and the statutory provisions which Congress enacted to accomplish it.

C. Nachman's Reading of § 4022 Makes That Section Totally and Irreconcilably Inconsistent With Other Provisions of Titles I, II, and IV.

It is clear that the participants whose benefits are at issue here have satisfied all the conditions required of them under the Nachman Plan and thus under the PBGC regulation.[12]

Indeed, Nachman concedes that "the benefits at issue provided by the Nachman Plan were, prior to the effective dates of Titles I and II of ERISA, vested in a contractual sense, so that an employee with seniority who terminated employment before age 65 might receive benefit payments." Pet. Br. 28.

[12] Petitioner does assert that the benefits at issue are not "nonforfeitable" under PBGC's definition because, according to Nachman, they "are not payable under the terms of the Nachman Plan," Pet. Br. 18, n.42, referring to Art. V, § 3 thereof. Since this argument, if sound, would be decisive, its placement in the footnote betrays petitioner's recognition that the argument is belied by the terms of the plan itself. Art. V, § 3 says nothing about when benefits are "payable"; that is the office of Arts. VII & VIII. Art. VII, § 2 provides: "Benefits shall become payable at the times and for the periods hereinafter set forth in Art. VIII." A. 28. Art. VIII, §§ 1, 2 & 3 each state when particular types of benefits "shall become payable." A. 29. Art. V, § 3, by contrast does not use the term "payable"; it says that the benefits "provided for herein" (specifically by Arts. VII & VIII) shall be only such as can be provided by the assets of the fund. A. 24.

Despite this concession, Nachman contends that "such vested benefits were not nonforfeitable since they were conditioned on full funding and were, in fact, not fully funded." Pet. Br. 28. As Nachman also states, its position is that those benefits were not "nonforfeitable" and are not insured by PBGC because "the benefits provided in the Nachman Plan were conditioned upon sufficiency of assets after termination." Pet. Br. 9. It is clear that this interpretation of § 4022(a) defeats the purpose of Title IV. That purpose, as we have seen, is to "guarantee that in the event their plan terminates with insufficient funds, their vested benefits would be paid . . . ." III Leg. Hist. 4752 (Senator Javits), see Appendix A, *infra.*

Consistent with this purpose § 4022(a) guarantees precisely those benefits which are "nonforfeitable . . . under the terms of a plan" (or "vested" as they were referred to in the Congressional deliberations). Congress wished to insure only benefits to which the participants are entitled even if their plan terminates without sufficient funds. Therefore, in order to determine what benefits are insured, *i.e.*, "nonforfeitable . . . under the terms of a plan," the PBGC looks to whether "on the date of termination of the plan the participant (or beneficiary) has satisfied all of the conditions required of him under the provisions of the plan to establish entitlement to the benefit . . . ." 29 C.F.R. 2605.6(a). Petitioner's contrary view, that the benefits here were forfeitable because they were conditioned upon sufficiency of assets upon termination, is wholly inconsistent with Congress' insurance program. It would render benefits "forfeitable" and thus not insurable, because of the oc-

currence of the very contingency against which the beneficiaries were to be protected by insurance.

Petitioner's interpretation of "nonforfeitable" likewise cannot be squared with another provision of Title IV, *i.e.*, § 4044. In that section, Congress clearly considered a benefit to be "nonforfeitable" even if there were not sufficient funds in the plan to pay that benefit in full.[13]

Section 4044 establishes six priority categories. The term "nonforfeitable" is actually used in § 4044(a)(5): "Fifth, to all other nonforfeitable benefits under the plan." Plainly, the benefits set forth in the four previous categories, §§ 4044(a)(1)-(4), were also considered to be "nonforfeitable." Section 4044(a)(6) states that the last order of priority is "all other [*i.e.*, 'forfeitable'] benefits under the plan." That Congress established an order of priorities for allocating plan assets among "nonforfeitable" benefits shows that Congress regarded benefits to be "nonforfeitable" for purposes of Title IV even if plan assets are insufficient to pay them.

Assets of a terminated plan are first allocated to benefits in Category 1. If there are more than sufficient assets to cover Category 1 benefits, assets are then allocated to benefits in Category 2. The same procedure is followed in succeeding categories. Thus, if there are not enough assets in a terminated plan to fund benefits completely through Category 5, there would be unfunded "nonforfeitable" benefits. These benefits, since they are "nonforfeitable," would be guaranteed by PBGC.

Nachman's position that benefits were not "nonforfeitable" because "the benefits provided in the Nachman Plan were conditioned upon sufficiency of assets after termination," Pet. Br. 9, is also completely at odds with the

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[13] Section 4044 mandates the allocation of the assets with respect to guaranteed and non-guaranteed benefits; the guarantee protects benefits which are within § 4022(a), but which have not been paid by the plan under § 4044.

funding provisions of Titles I and II. Nachman concedes that the term "vested" admits to the contingency that payment may be impossible because of a lack of funds in the trust upon termination, but it is asserted that the term "nonforfeitable" admits of no such possibility. Pet. Br. 26-31. Only fully funded benefits, then, can be nonforfeitable. Thus, Nachman's vested benefits "were not nonforfeitable since they were conditioned on full funding . . . ." Pet. Br. 28. Such a reading of "nonforfeitable" would be contradictory to the meaning and structure of the pension rules contained in the Internal Revenue Code and similar provisions in Title I of ERISA.

In order to enjoy favorable treatment under the Internal Revenue Code, a plan must provide for nonforfeitability of the full benefit at normal retirement age. The Code also provides three alternative schedules to achieve nonforfeitability earlier, over the course of employment; a plan must contain provisions meeting or exceeding at least one of the three alternatives. I.R.C. § 411 (added by ERISA § 1012). Yet there is no indication that these rules are violated if the plan has total assets valued below the required vested benefits and thus, would be incapable upon termination of paying all vested benefits. Indeed, the detailed funding rules established by ERISA require funding of certain benefits over the course of as many as 40 years, without regard to the fact that the benefits might already be required by the vesting requirements to be nonforfeitable. And while it might be argued (consistent with Nachman's notion of "nonforfeitability") that full funding is not necessary until termination, there is no indication on the face of the Act or in the exhaustive Congressional discussion that there is a contribution "catch up" requirement when a plan terminates to assure full funding at that time.

In short, there is no logic in the coexistence of a "full funding" requirement for nonforfeitability under the vesting rules, Pet. Br. 28, and of separate funding rules. Congress could reasonably have chosen either, but not both. Acceptance of petitioner's position would mean that the detailed funding rules, carefully crafted to balance safety for participants with reasonable demands on plan sponsors, are superfluous. There is no need to reach a result so patently inconsistent with Congress' intent. The correct resolution, instead, is to recognize the fallacy of petitioner's reading of "non-forfeitability."

Further confirmation that Congress did not intend nonforfeitability to require "full funding" is found in the very creation of the Title IV insurance program, which is predicated on the reality that pension plans will sometimes be insufficiently funded on termination. If funds were sufficient, there would be no need for the guarantee. And the termination of plans with insufficient funds was, as already shown, the cause of the loss of benefits against which Congress sought to protect plan participants. To argue that such benefits are not "nonforfeitable" and therefore not insurable if the plan's assets are insufficient is, therefore, totally absurd.

D. Title IV Guarantees Became Effective Immediately Upon Enactment.

Congress gave careful consideration to the effective dates of the various provisions of ERISA. Title IV was no exception. The provisions of Title IV pertinent to this case came into effect on the date of enactment, September 2, 1974. § 4082(a). The Conference Committee reported:

> Probably one of the most difficult problems confronted by the conferees was the selection of effective dates for the insurance program, and here both Senate and House conferees worked diligently to arrange a structure of effective dates that would bring the insurance protection generally into effect as quickly as possible.
>
> [III Leg. Hist. 4766]

Congress took the unusual step of directing that PBGC pay benefits guaranteed under Title IV with respect to single-employer plans terminated even before that date, but after June 30, 1974, subject to certain conditions. § 4082(b). Representative Ullman and Senators Williams and Humphrey each stated that the "after June 30, 1974" date was chosen "to provide prompt and effective protection to the employees concerned." III Leg. Hist. 4678, 4742, 4781.

Congress' clear intent to provide guarantees and impose liability immediately on passage of ERISA is confirmed by the special provision to cushion the effect on employers of the concomitant liability. Congress authorized the PBGC for 270 days after the enactment of ERISA to "waive" or "reduce" employer liability [14] where "necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan." § 4004(f)(4).

The statute and the legislative history are absolutely clear that PBGC "shall guarantee the payment of all

[14] The employer who sponsored a terminated plan is generally liable to PBGC for the difference between the value of the benefits guaranteed by PBGC and the value of plan assets at termination. However, PBGC's claim is limited to 30 percent of the net worth of the employer at (or within 120 days before) plan termination. § 4062(b).

nonforfeitable benefits"[15] and that program was effective on the date of enactment, *i.e.*, September 2, 1974. §§ 4022 (a), 4082(a).

Petitioner Nachman does not dispute these facts. *See* Pet. Br. 10, 14, and 15. Yet, as shown below, the consequence of accepting Nachman's position in this case would, as a practical matter, be the same as a delay in the effective date for the majority of pension plan participants Congress expressed anxiety to protect immediately.

As this Court observed in *Los Angeles Dept. of Water & Power* v. *Manhart*, 435 U.S. 702, 721-722 n. 40 (1978), Congress "set a wide variety of effective dates for different provisions of" ERISA. Congress was particularly precise with respect to the impact of Title IV on plans which terminated on or about the September 2, 1974 date of enactment. As we have noted, it even empowered PBGC to guarantee benefits to employees under some plans which terminated in the two months prior to that date. § 4082(b). Benefits earned prior to enactment were to be insured. In reporting out S. 4 and H.R. 2, the respective Labor Committees said in identical words:

> The bill reported by the Committee requires plan termination insurance to cover unfunded vested liabilities incurred *prior to* as well as subsequent to enactment of the Act, in order to prevent employees from being deprived from insurance protection for retirement credits earned before enactment.[16]

Congress likewise took great pains in establishing the effective dates of the various provisions of Titles I and

[15] Section 4022(a). These benefits are subject to limitations not pertinent here. § 4022(b).

[16] I Leg. Hist. 610, II Leg. Hist. 2361, emphasis in Senate Report. See also the House Committee on Education and Labor's explanation of § 401 of H.R. 12906, II Leg. Hist. 3346.

II. (*See* Appendix B, *infra*, which sets forth Senator Javits' explanation of these Congressional determinations.)

Employer liability commenced on September 2, 1974. In attempting to escape liability, petitioner seizes on January 1, 1976, the effective date of the vesting standards in § 203 of Title I for Nachman's plan.[17] The real reason for that delay was to enable ongoing plans to "adjust" to the newer vesting standards.[18] By terminating its plan before January 1, 1976, Nachman never was required to comply with those standards. Nachman's liability results not from Titles I and II but from Title IV, and is governed by Title IV's effective date.[19] January 1, 1976 is not the date upon which Nachman's liability to PBGC turns; September 2, 1974 is the date from which Nachman's employees enjoyed the satisfaction of having a government guarantee backing up certain of the pension promises made to them and it is the date on which Nachman's contingent liability arose. It was no part of Congress' intent in delaying the effective date of the vesting standards to undercut the decision "to provide prompt and effective protection to the employees concerned." *See* p. 23, *supra*.

[17] For plans in existence on January 1, 1974, the vesting rules generally became effective on the first day of the first plan year beginning after December 31, 1975. § 211.

[18] III Leg. Hist. 4675.

[19] Nachman asserts that imposing employer liability before January 1, 1976, "would render this grace period meaningless and nonexistent." Pet. Br. 37. This is absolutely untrue. Benefits under plans, such as Nachman's, with less generous vesting provisions than mandated by § 203 were guaranteed only to the extent of nonforfeitable benefits under the plan and the employer's liability was accordingly smaller. Compare Art. VII, § 1(C)-(D), A. 28, with § 203(a)(1)(A)-(C).

E. PBGC's Regulation Correctly Interprets "Nonforfeitable" and Should be Followed.

Participants in the Nachman plan who have satisfied all of the plan's requirements for eligiblity are therefore eligible for Title IV's guarantee, despite plan language limiting recourse to assets at termination, under the PBGC regulation, 29 C.F.R. § 2605.6(a), which states in pertinent part:

> For the purposes of this part, a benefit payable with respect to a participant is considered to be nonforfeitable, if on the date of termination of the plan the participant (or beneficiary) has satisfied all of the conditions required of him under the provisions of the plan to establish entitlement to the benefit . . . .

The regulation was properly issued under authority of § 4002(b)(3), which empowers PBGC "[t]o adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by the Act." The regulation clarifies an essential component of the regulatory scheme. PBGC cannot guarantee the payment of nonforfeitable benefits without determining what those benefits are. It cannot, as directed by § 4061, pay the benefits guaranteed under § 4022(a) unless it first determines their amount. To do this PBGC must know what benefits § 4022(a) guarantees.[20]

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[20] There is no merit to *amicus* Concord's claim, Concord Br. 27, that, as in *Chrysler Corp.* v. *Brown*, ——U.S. ——, 99 S.Ct. 1705, 1718 (April 18, 1979) (hereafter *Chrysler*), there is no "nexus" between PBGC's regulation and a grant of legislative authority by Congress. The purpose of the regulation is to provide a basis for the basic Title IV functions we have just described in the text, and "the width of administrative authority must be measured in part by the purposes for which it was conferred . . . ." *Permian Basin Area Rate Cases*, 390 U.S. 747, 776 (1968). Concord's attempt, Concord Br. 27-28, to equate PBGC's § 4002(b)(3) authority with the provision that this Court held in *Chrysler*, 99 S.Ct. at 1721-1725, did not authorize substantive rules cannot survive comparison of the relevant language. While the provisions dealt with in *Chrysler* and § 4002(b)(3) both contain language authorizing regulations limited to agency affairs, only § 4002(b)(3) adds broad authority to issue regulations for "the exercise of all other rights and powers granted to it by this Act." Since one of PBGC's principal powers is to "guarantee the payment of all nonforfeitable benefits . . ." under § 4022(a), PBGC clearly was authorized to promulgate regulations construing that section.

Petitioner contends that PBGC is foreclosed from promulgating its own definition of "nonforfeitable" for purposes of Title IV because that term is defined in Title I, § 3(19). That was the basis on which the District Court ruled in Nachman's favor. The Court of Appeals stated that the Title I definition should govern in Title IV, Op. 7, n.6, but reversed the lower court's holding on the grounds that the benefits at issue in this case were "nonforfeitable" under that definition.

We urge that this case be decided on the basis of the definition of "nonforfeitability" in PBGC's regulation rather than that of § 3(19) of the Act as construed by the Court of Appeals. We do so primarily because, with all respect to that court, PBGC's definition more precisely reflects the purpose of Congress in using that term in Title IV. Moreover, while in this case the same result properly follows under either definition, we are guided by Mr. Justice Jackson's caution that "sometimes the path that we are beating out by our travel is more important to the future wayfarer than the place in which we choose to lodge."[21] That the path which we have chosen is shorter is evident from the Court of Appeals' opinion, for in order to determine the meaning of the

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[21] *First National Bank of Chicago* v. *United Airlines*, 342 U.S. 396, 398 (1952) (concurring opinion).

operative words in § 3(19), the court looked to the purpose and history of Title IV; PBGC's definition is based directly on that clear evidence of Congressional intent. PBGC's approach is also more consistent with the Congressional decision to divorce eligibility for insurance from the statutory vesting standards to which the § 3(19) definition of "nonforfeitability" is addressed. But above all, we fear that the path chosen by the Court of Appeals here could lead a court to deny benefits to participants whom Congress wanted to protect. While we cannot foresee all the difficulties the § 3(19) definition would create for the administration of Title IV, a clear warning signal is provided by a decision which the Court of Appeals, petitioner, and *amicus* Concord all discuss, *Riley* v. *MEBA Pension Trust*, 570 F.2d 406 (2d Cir. 1977), *on remand*, 452 F. Supp. 117 (S.D.N.Y. 1978), *aff'd on other grounds*, 586 F.2d 968 (2d Cir. 1978).[22]

If the issue is approached on the basis of the statutory language rather than on maxims of statutory construction,[23] petitioner's contention that 3(19) should govern

[22] *Riley* v. *MEBA Pension Trust*, 570 F.2d 406 (2d Cir. 1977), involved a provision in the MEBA pension plan which barred retirees from receiving benefits while working in the maritime industry. The Second Circuit held that by virtue of this provision, benefits under the MEBA plan were not "nonforfeitable" within the meaning of Section 3(19), because the receipt of the benefits was not "unconditional" and therefore not "enforceable against the plan." If that definition were carried over to Title IV, then PBGC could have guaranteed *no* benefits under the MEBA Plan if it had terminated in 1975 for, by the very existence of the rule against retirees working in the maritime industry, the benefits under the plan would have been conditional and thus not "nonforfeitable." So long as the plan was in operation, the only effect of this rule was to suspend the benefits of those individual retirees who violated the rule; the rule did not affect other participants at all. Denying PBGC's guarantee would be contrary to the objective of Title IV, which is to insure benefits which employees would have obtained but for termination.

[23] Because of the unusually heavy reliance on rules of construction throughout petitioner's brief and that of *amicus* Concord, it bears

Title IV is unpersuasive. Section 3 ("Definitions") is contained in Title I of the Act and is explicitly stated to be "For purposes of this title . . . ." Congress thereby made clear that the definitions contained in § 3 were to govern "this title," namely Title I. If Congress had intended these definitions to control throughout ERISA it would have written, "For purposes of this Act." The phrase "this Act" was used in the immediately preceding section.[24] That Congress did not intend the definitions of Title I to carry over automatically to other provisions of

mentioning that such rules only provide guidance to reasoned statutory interpretation, and not a substitute for it. Moreover, they generally contain their own limitations, or are controverted by opposing canons. As Professor Llewellyn wrote:

> When it comes to presenting a proposed statutory construction in court, there is an accepted conventional vocabulary. As in argument over points of case-law, the accepted convention still, unhappily, requires discussion as if only one single correct meaning could exist. Hence there are two opposing canons on almost every point. An arranged selection is appended. Every lawyer must be familiar with them all: they are still needed tools of argument. At least as early as Fortescue the general picture was clear, on this, to any eye which would see.
>
> Plainly, to make any canon take hold in a particular instance, the construction contended for must be sold, essentially, by means other than the use of the canon: The good sense of the situation and a *simple* construction of the available language to achieve that sense, *by tenable means, out of the statutory language.*

"Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed," 3 *Vand. L. Rev.* 395, 401 (1950) emphasis in original. (See also, the collection of canons of construction—in separate columns headed "Thrust" and "Parry"—*Id.* at 401-406.

[24] Section 2(b) begins, "It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, ..."

Section 2(c) begins, "It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries . . . ."

the Act is further evidenced by the fact that both Titles II and IV contain their own definition sections, § 1015 (which creates a new § 414 of the Internal Revenue Code) and § 4001, respectively.

Petitioner asserts that "[i]t would be intolerable to have different definitions of the important concept of nonforfeitable benefits for one title of ERISA than for another." Pet. Br. 20. It certainly would not be intolerable here, and this Court has rejected that dogmatic approach to statutory construction:

> It is not unusual for the same word to be used with different meanings in the same act, and there is no rule of statutory construction which precludes the courts from giving to the word the meaning which the Legislature intended it should have in each instance."

Atlantic Cleaners & Dyers v. *United States*, 286 U.S. 427, 433 (1932).[25]

Title IV deals with different aspects of pension plan regulation than do Titles I and II, utilizing different procedures and employing a unique statutory process to achieve its ends without requiring changes in plan terms.

[25] *Kent Manufacturing Corp.* v. *Commissioner*, 288 F.2d 812 (4th Cir. 1961) (hereafter *Kent*), relied on by both courts below, is not to the contrary. The Fourth Circuit said only that "[a]n earlier specific definition *may* properly color a subsequent use of the same words without redefinition." *Id.* at 815 (emphasis added). The court did not say that it *must* color, let alone control, the meaning of the subsequent use. In *Kent* the legislative history of the provision at issue confirmed that the meaning set forth in the definition was intended to be applied. The PBGC opinion letters cited at Pet. Br. 19-20, n. 44 and Concord Br. 33, n. 17 are entirely consistent with both *Kent* and the PBGC's action in promulgating 29 C.F.R. § 2605.6(a). The letters implicitly recognize that definitions from other titles of the Act may be a useful guide in applying terms for Title IV purposes, absent countervailing considerations. But their clear import, read as a whole, is to address Title IV questions and to resolve them consistently with the mandate of that Title.

Although the bill which passed the House would have insured only benefits which plans were required to provide under the minimum vesting standards—*i.e.*, the standards contained in Titles I and II—the Conference Committee adopted the Senate version, which guaranteed benefits which are nonforfeitable under the terms of a plan without regard to those standards.[26]

In these circumstances, the initial inquiry about a PBGC regulation interpreting Title IV should be whether it carries out the purposes of that Title. Since PBGC's definition does carry out the purposes of Title IV, and any narrower definition would deny benefits which Congress intended to guarantee, PBGC's regulation should be approved. Moreover, PBGC's special responsibilities under Title IV bring into play the oft-stated proposition that "[t]he interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute." *Miller* v. *Youakim*, 440 U.S. 125, 144 (1979), and cases there cited.

In the leading case on this point, Justice Cardozo wrote that this "practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in

[26] The argument that because the term "nonforfeitable" has the same meaning in Title II as in Title I, it must also have the same meaning in Title IV as in Title I, Pet. Br. 19, is unsound. It is true, as petitioner states, that the vesting rules in Titles I and II contain essentially identical language; the same is true of accrual and participation rules. The reason that the meaning of "nonforfeitable" is identical in Titles I and II is not that the Title I definition carries over to Title II by its own force, but that attributing to that term different meaning in Title II would be inconsistent with Congress' intent to establish uniform standards for compliance with Title I and tax-qualification under the Internal Revenue Code, as amended by Title II. *See* Reorg. Plan No. 4 of 1978, 3 C.F.R. 332 (1978 Compilation). There is no such intent to establish perfect congruence between Titles I and IV generally, or between the minimum vesting standards of § 203 and the benefits guaranteed in § 4022.

motion; of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294, 315 (1933). The PBGC regulation in issue here is a classic example of "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion." [27]

F. Section 3(19), While Not Controlling, Is Nonetheless Consistent With the PBGC Regulation.

As we have noted, the Court of Appeals accepted petitioner's contention that the meaning of "nonforfeitable" in § 4022(a) is governed by the definition of that term in § 3(19). The Court of Appeals held that the benefits in issue here are "nonforfeitable" under that definition.

Petitioner disagrees with the Court of Appeals for two reasons: it asserts that the benefits were not "unconditional" because they were conditioned upon the sufficiency of assets in the fund to pay them, and that for the same reason the claim for the benefits is not "legally enforceable against the plan." Pet. Br. 22-25. Neither objection to the Court of Appeals' analysis is well taken.

[27] The interpretation of the statute at issue in the instant case is incorporated in the Guaranteed Benefits Regulation promulgated by the PBGC on September 22, 1975. This was the most important regulation issued by the PBGC to that date and remains central to its administration of Title IV. Accordingly, it received extraordinary attention within the PBGC, within the Federal establishment and from the private sector pension community.

Apart from the extensive work of PBGC staff, the regulation was reviewed before being published in the Federal Register as a proposed regulation (1) by the Presidentially appointed Advisory Committee to the PBGC at nine meetings over a period of four months, (2) by officials of the Department of Labor, and the Office of the Assistant Secretary of the Treasury for Policy and the Internal Revenue Service, and (3) by the Secretaries of Labor, Commerce, and the Treasury in their roles as the members of the PBGC's Board of Directors. In response to the publication of the proposed Guaranteed Benefits Regulation and the invitation to comment thereon, a number of comments were received. Those comments were carefully considered and, before the final regulation was promulgated, it was again reviewed (1) by the Advisory Committee to the PBGC, (2) by the staffs of the Labor and Treasury Departments and IRS, and (3) by the three Cabinet members who are PBGC's governing board.

With respect to the "unconditional" requirement the Court of Appeals reasoned:

> Nor is their claim against the plan conditional. All conditions place[d] upon the participant such as age and length of service have been met. The PBGC definition interprets "unconditional" only as referring to those conditions placed on the participant and not to sufficiency of assets. Satisfaction of the claim is dependent upon sufficient assets, but this should not be viewed as a condition on the claim. Under the pre-ERISA terminology, one author clarified that although benefit claims in fact were conditioned on the availability of funds in the trust, they were not to be considered conditional rights.

Op. 9 (footnote omitted).

Petitioner characterizes this result as illogical; it says, "[u]nconditional means unconditional," and then sets forth a dictionary definition of that word. Pet. Br. 23. But there is nothing illogical about giving statutory language a meaning which is less than absolute when, in the context of that legislation, it appears that the absolute was not intended. Far from being "illogical," it is, as Judge Learned Hand taught, "one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary." [28]

[28] *Cabell* v. *Markham*, 148 F.2d 737, 739 (2d Cir. 1945) *affirmed*, 326 U.S. 404 (1945). Petitioner cites one sentence from IRS regulation 1.411(a)-4 to bolster its contention that conditioning receipt of benefits on sufficiency of plan assets at termination is a forfeiture. Pet. Br. 17, n.41. The next sentence of that regulation states that "a plan does not violate the nonforfeitability requirements merely because in the event of a termination an employee

The Court of Appeals here properly looked to a noted authority in the pension field, Professor Dan M. McGill, to determine whether "unconditional", when used in the context of the vesting of pension benefits, excluded the condition of asset sufficiency. Without acknowledging the Court of Appeals' reliance on Professor McGill, petitioner objects that "no peculiarities 'of technical pension language' could lead to such an illogical result." Pet. Br. 23. It is entirely reasonable and proper for a court to give seemingly absolute language a more sensible meaning when, from the context and from general usage, it appears that the absolute could not have been intended.[29]

does not have any recourse towards satisfaction of his nonforfeitable benefits from other than the plan assets or the Pension Benefit Guaranty Corporation." Petitioner's interpretation, then, suggests inconsistency within the IRS regulation, and resolves the self-created conflict in favor of its own version of nonforfeitability. However, the language petitioner seizes upon can be read harmoniously with the regulation of which it is a part and with Title IV; that language would bar provisions that reduce rights to plan benefits to the level of assets at termination because such provisions could permit reversion to the employer of additional assets subsequently received by the plan.

[29] *Amicus* Concord argues that the Court of Appeals' reasoning "embodies a significant error of syntax because the fulcrum of its holding is its perception that the adjective 'unconditional' in § 1002 (19) [§ 3(19) of ERISA] modifies 'claim' rather than 'benefit'." Concord Br. 14. We suggest, however, that the error is on Concord's part. As Mr. Justice Harlan wrote for this Court, "insights derived from syntactical analysis form a hazardous basis for the explication of major legislative enactments." *Machinists* v. *Labor Board*, 362 U.S. 411, 417, n.7 (1960). Concord's argument gives point to the wisdom of this observation. Concord itself appears to be confused as to whether it is contending that the word "benefit" or the word "part" is modified by "unconditional" in § 3(19) and must be "legally enforceable." Compare the sentence in Concord's brief quoted above, with two ensuing paragraphs. Concord Br. 14-15. In any event, while we readily grant that 3(19) is not a model of draftsmanship, and thereby invites grammatical nitpicking, it is plain enough that the Court of Appeals' reading was correct, for, only a *claim* can be enforced; it makes little, if any sense, to speak of a benefit (or part of a benefit) as being "enforceable"; so too, it is a "claim" rather than a "benefit" which is (or is not) subject to a condition.

With respect to the other element of § 3(19) the court below correctly stated that:

> although the benefit claim is admittedly not legally enforceable against the employer under the terms of the plan, the statute requires only that the claim be enforceable against the *plan*. Nachman's employees' claims are enforceable against the plan, they simply may not be collectable." Op. 8-9 (emphasis in original).

Petitioner's argument to the contrary is without merit. Although it asserts that "enforceability is a term used in contract law," Pet. Br. 24, there is no authority cited for that proposition. It is plainly mistaken, since in a suit to enforce the contract the court examines whether the plaintiff establishes a breach and damages, not whether the defendant will have sufficient assets to permit the judgment to be collected.[30]

In support of its interpretation of § 3(19), petitioner refers to the use of the word "nonforfeitable" in three provisions of the 1954 Internal Revenue Code which were unchanged by ERISA. Pet. Br. 28-29, 11-12. Petitioner attempts to demonstrate that the term "nonforfeitable"

[30] Petitioner asserts that claims to benefits were not enforceable against the plan after termination under the allocation provisions of Art. X, § 3, Pet. Br. 24-25. Petitioner's unstated premise is that those plan provisions governed allocation of assets on termination of its plan. That is not so. From September 2, 1974 onwards, all pension plan assets must be allocated on termination in the priority order specified by § 4044(a). § 4044(a); see III Leg. Hist. 4642 (Conference Report on 93-406); I Leg. Hist. 1152-1153 (Senate Report 93-383 on S. 1179). The benefit to which a participant is entitled under the benefit formula of the plan is the starting point for applying the § 4044(a) rules. Thus, there is no reason to discuss the claimed effect at petitioner's plan termination of Art. X, § 3; it was a dead letter. In any event, allocation provisions go only to the handling of whatever assets the plan has at termination. That is a different matter than the issue in this case, which involves rights of employees against the plan. Those rights are no more affected by rules which govern the division of plan assets at termination than by the principal plan terms in issue here (Art. V, § 3), which limit recourse to the plan assets at termination.

as used before ERISA had the consistent and essential characteristic of permitting no condition with respect to the lack of funds to pay benefits. In fact the function of nonforfeitable as used in these Code provisions deals with the disposition of funds on termination. This is the very opposite of the question at hand, which is the impact of the concept of nonforfeitability in regard to a shortfall of funds at termination. Section 401(a)(7), the present Section 411(d)(3) of the Internal Revenue Code, requires that once an employer makes a contribution subject to preferential tax treatment, he cannot reacquire the funds by terminating the plan. Thus, accrued benefits, even if not vested, must become "nonforfeitable" upon termination to the extent funded. For practical purposes an employee's previously unvested rights would vest upon termination. Title IV of ERISA deals with an entirely different matter. It protects rights vested before termination, within statutory limits, despite lack of funds in the plan.

Likewise, I.R.C. § 401(d)(2) fails to support Nachman's position because it also addresses itself to an employee's right to that which is in the fund, rather than to benefits promised that are not funded.[31]

[31] Finally, Nachman turns to the fact that the regulations under I.R.C. § 402(b) refer to contributions which have been made, in defining the point when a contribution is nonforfeitable. Pet. Br. 28. The argument is that under this provision a contribution cannot be nonforfeitable until it is made; and therefore, Nachman concludes, a promised benefit cannot be nonforfeitable until a contribution is made. But the fault of the logic is apparent. There is nothing impossible with making a promise before a contribution, although it is clearly difficult to discuss the consequences of a contribution before it exists. The purpose of I.R.C. § 402(b) is to address the tax consequences to an employee regarding contributions by an employer to a nonexempt trust. Because it is a general principle of the tax law that a mere promise (vested or otherwise) does not give rise to income to a person on the cash method, the Code and regulation provisions address only the special case in which there has been a transfer of funds.

These usages of the term nonforfeitable occurred in the context of already transferred property; this context, however, should not be substituted for the meaning of the term so that tax law provisions discussing the tax consequence of unconditional rights are read to impose a requirement that all rights be unconditional.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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Appendices

APPENDIX A

The Legislative History and Purpose of ERISA

ERISA was the culmination of many years of effort in both Houses of Congress. In particular, the termination of Studebaker's pension plan in 1964, resulting in losses of pension benefits for thousands of long-term employees, dramatized the need for termination insurance. Congress responded with a ten-year effort that produced Title IV of ERISA in 1974.

The history of Title IV is complicated. Two committees in each House worked on the pension reform legislation. In the Senate, the Committee on Labor and Public Welfare (hereafter "the Senate Labor Committee") and the Committee on Finance worked on ERISA. In the House, the Committee on Education and Labor (hereafter "the House Labor Committee") and the Committee on Ways and Means worked on the Act.

In 1973, two major pension reform bills were introduced in the Senate. S. 4, the Williams-Javits Bill, was referred to the Senate Labor Committee. S. 1179 was referred to the Senate Finance Committee. The Senate Labor Committee reported out a revised version of S. 4 (I Leg. Hist. 389-586), discussed in S. Rep. No. 93-127 (I Leg. Hist. 587-665). The Senate Finance Committee reported out a revised version of S. 1179 (I Leg. Hist. 780-1062), discussed in S. Rep. No. 93-383 (I Leg. Hist. 1063-1224). The sponsors of S. 4 and S. 1179 agreed on a compromise bill which they offered as a substitute for S. 4 (I Leg. Hist. 1271-1497). On September 19, 1973, the Senate unanimously passed that substitute as an amendment to H.R. 4200, a minor House bill unrelated to pension reform (II Leg. Hist. 1883-2178).

In the House, two major pension reform bills were originally introduced. H.R. 2 and H.R. 462 were re-

ferred to the House Labor Committee which reported out a revised version of H.R. 2 (II Leg. Hist. 2181-2347), discussed in H. Rep. No. 93-533 (II Leg. Hist. 2348-2392).

The House Ways and Means Committee confined its consideration of pension reform to Internal Revenue Code amendments. On February 5, 1974, it reported out H.R. 12481, which had been introduced the previous day (II Leg. Hist. 2394-2583) and which is discussed in H. Rep. 93-779 (II Leg. Hist. 2584-2759). This bill was designed to complement H.R. 2.

A second set of complementary bills was then reported to the floor. The House Labor Committee presented H.R. 12906 (II Leg. Hist. 2761-2922), a revised version of H.R. 2 which is explained at II Leg. Hist. 3293-3350. The House Committee on Ways and Means reported out H.R. 12855 (II Leg. Hist. 2924-3114), discussed in H. Rep. No. 93-807 (II Leg. Hist. 3115-3292); H.R. 12855 was a slightly revised version of H.R. 12481. The two new bills were offered as amendments to H.R. 2. H.R. 12906 became Title I and H.R. 12855 became Title II of the new H.R. 2 (III Leg. Hist. 3898-4250). The House passed H.R. 2 on February 28, 1974.

H.R. 2 was sent to the Senate, which amended it by deleting the House language and substituting the exact language of H.R. 4200 (formerly S. 4). On March 4, 1974, the Senate passed the amended H.R. 2 (III Leg. Hist. 3599-3895).

A Committee of Conference adopted a substitute for both the House and Senate versions of H.R. 2. The revised bill and its accompanying report were submitted as H. Rep. No. 93-1280 (III Leg. Hist. 4277-4654). The bill was passed by both Houses (III Leg. Hist. 4656-4835), and was signed into law by President Ford on September 2, 1974 as P.L. 93-406, 88 Stat. 829 (III Leg. Hist. 4836-5043).

Congress established the pension plan termination insurance program to protect employees against the loss of vested benefits caused by termination of a pension plan with insufficient funds. The purpose of the pension plan termination insurance program was stated by Senator Williams, the Chairman of the Senate Labor Committee at the beginning of the debate on S. 4. Senator Williams spoke of the necessity for pension reform.

> If we are to insure that retirement benefits earned by and promised to our workers will really be given to them, then passage of such a measure is essential.
>
> This legislation, co-sponsored by 53 Members of the Senate is the product of the most comprehensive study of the private pension system ever undertaken by the Congress.
>
> This 3-year study was conducted by the Subcommittee on Labor pursuant to three successive resolutions of the Senate, and was undertaken to ascertain the need for statutory protections for workers' pension programs and to formulate appropriate corrective legislation.
>
> The provisions of S. 4 are designed to eliminate the deficiencies which our study identified in the existing private pension system.
>
> Its basic goal is to assure workers that they will receive the promised pension benefits earned for their retirement during their working lives.
>
> * * * *
>
> For too long and for too many workers, the promise of pension benefits upon retirement has been an illusion and indeed, a hoax.
>
> [II Leg. Hist. 1598-1599]

Senator Williams then discussed the loss of pension benefits due to insufficient funding at termination:

Another reason why so many employees have found their pension expectations to be illusory is that the employer may shut down, and if there are insufficient funds to meet the vested claims of the participants, they have no recourse.

A classic case, of course, is the shutdown of Studebaker operations in South Bend, Ind., in 1963, with the result that 4,000 workers lost 85 percent of their vested benefits because the plan had insufficient assets to pay its liabilities.

While this was a spectacularly tragic instance, it was by no means unique. Last year, for example, P. Ballantine and Son, a substantial contributor to a multiemployer plan, sold its operations and withdrew from the plan.

Because the plan did not have sufficient assets to cover vested liabilities, several hundred employees, with as many as 30 years service, will lose a substantial portion of their vested benefits.

These, of course, are by no means isolated cases. According to a recently-issued study by the Departments of Labor and Treasury, over 19,000 workers lost vested benefits last year because of the termination of insufficiently funded plans.

[II Leg. Hist. 1599-1600][1]

[1] In the section on plan termination insurance in the Senate Finance Committee report on S. 1179, the Labor-Treasury study was discussed under the heading "General Reasons for Change."

A joint study by the Treasury Department and the Department of Labor indicates that there were 683 plan terminations in the first seven months of 1972 that were reported to the Internal Revenue Service. These terminations resulted in the loss of benefits with a present value of some $20 million, by about 8,400 pension claimants (participants, retirees, and beneficiaries) in 293 of the terminated plans. The average loss of benefits for claimants amounted to $2,400. About $11 million of the total losses were suffered by 3,100 claimants who were retired, eligible for retirement, or vested in their benefits. Their losses averaged $3,600 per person.

On the average, retirees and beneficiaries lost 42 percent of the value of their current pensions, participants eligible for retirement lost 57 percent of the value of their benefits (one-tenth of them lost their entire benefits), participants who were fully vested but not yet eligible for retirement lost 65 percent of the value of the benefits (two-fifths of them lost their entire benefits), and former employees with deferred vested benefits lost 97 percent of the value of their benefits.

[I Leg. Hist. 1147, citing Department of the Treasury and department of Labor, Study of Pension Plan Terminations, 1972—Interim at 2, 18, 23]

An earlier study, Beier, "Terminations of Pension Plans: Eleven Years' Experience, "*Monthly Labor Review*, (July, 1967), at 26-30, was noted in the Interim Report of Activities of the Private Welfare and Pension Plan Study, Senate Committee on Labor and Public Welfare, Subcommittee on Labor, 92nd Cong., 2nd Sess., at 74 (1972). (The Court inadvertently gave the date of this report as 1971.)

In the House, Representative Dent, the Chairman of the General Subcommittee on Labor of the House Committee on Education and Labor, summarized the termination insurance provisions of H.R. 2:

> Defined benefit plans will be covered by insurance to protect participants against the loss of benefits on account of plan terminations prior to completion of the funding cycle.
>
> This provision will provide a back-up guarantee to every pension plan that, regardless of the economic fortunes of the companies sponsoring the plan, its obligations will be met.

[II Leg. Hist. 3375]

Representative Gaydos, member of the House Subcommittee on Labor, said, after describing the Labor-Treasury study:

These statistics indicate that while compared to the total number of employees covered by private pension plans those who experienced losses represented a very minor percentage, the fact remains that there were 8,500 persons who experienced losses who were either removed from the labor force by retirement or ready to retire or whose benefits were fully vested.

[II Leg. Hist. 3381]

Representative Annunzio said:

But the provision which I am most happy to see incorporated is the termination insurance program. As far as I am concerned, the termination insurance program will provide the backbone of confidence that our workers must have in the private pension system—just as we have confidence in the safety of our personal savings in financial institutions as a result of FDIC and FSLIC. Termination insurance will eliminate the legitimate fears of thousands of our workers that the pension plan which they so desperately depend on will not pay off at retirement. It will also put an end to the actual losses which have been experienced by about 20,000 workers a year who unfortunately find out that their pension plan is unilateraly terminated without sufficient assets to pay all benefits due.

[II Leg. Hist. 3479]

These views concerning the purpose of the termination insurance program were reiterated when the conference report (which was approved and enacted as ERISA) was brought to both Houses. For example, Representative Brademas, the representative from the South Bend, Indiana district in which the Studebaker plant was located, referred to the Studebaker closing and the findings of the Labor-Treasury terminations study, and concluded:

Mr. Speaker, over a decade ago the collapse of Studebaker and its pension fund taught us a painful lesson. If pension insurance had been available then, thousands of pensions would have been saved. Enactment of this comprehensive pension reform legislation which includes plan termination insurance is long overdue and I urge my colleagues to give H.R. 2 their full support.

[III Leg. Hist. 4694]

Representative Annunzio said:

The case for pension plan reform was made known by the thousands of workers who voiced their legitimate grievances to us, who told their stories before House and Senate hearings, and even on TV the people spoke, and we listened.

The pension reform bill will assure that those workers under private pension plans will get the benefits to which they are entitled—even if a company for which they worked goes out of business. I feel that the pension plan termination insurance program is the real backbone of the legislation. It will be the spine of the private pension system since it will assure workers that if they are entitled to a pension, they will get one.

As I have said in the past, in speaking for the inclusion of a termination insurance program, such a program would eliminate the legitimate fears shared by thousands of workers that the pension on which they so desperately depended would not pay off at retirement. No longer will actual losses be experienced by thousands of workers each year who have found that their pension plan was terminated without sufficient assets to pay all benefits due.

[III Leg. Hist. 4698-4699]

In describing the conference report to his Senate colleagues Senator Williams said:

> While the funding provisions are designed to assure that sufficient assets are available to a plan to pay benefits when due, experience has shown that participants and beneficiaries, even in well-funded plans, may lose vested rights when a plan terminates because of plant closure or other reasons.
>
> Accordingly, the conference substitute, as did the Senate and House bills, establishes an insurance program to protect employees against the loss of vested benefits in the event of plan termination.
>
> [III Leg. Hist. 4741]

Senator Bentsen, the sponsor of S. 1179 and the member of the Senate Finance Committee most responsible for ERISA stated:

> There is a clear need to legislate minimum funding standards so that pension plans are accumulating sufficient assets to meet their obligations. It is also essential for all pension plans to acquire termination insurance to guarantee payment of vested benefits in the event that a plan happens to terminate with insufficient assets to meet its obligations. This bill sets minimum funding standards and establishes a termination insurance program.
>
> * * * *
>
> We must not forget that the termination of a retirement plan is much more than a statistic compiled for Government charts. It is much more than a list of numbers or a series of percentages. As the victims of pension plan terminations can easily attest, a termination represents a great personal tragedy.
>
> [III Leg. Hist. 4793] [2]

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[2] See also Senator Bentsen's earlier statements concerning the need for termination insurance [I Leg. Hist. 213-214 and II Leg. Hist. 1635-1636].

And Senator Javits, who had first introduced a pension reform bill (which included a plan termination insurance program) in 1967, and who was, with Senator Williams, co-author of S. 4, summarized the termination insurance provision of ERISA in these terms.

> Employees would have the right to government insurance of their pension benefits—similar to FDIC insurance of bank deposits—which would guarantee that in the event their plan terminates with insufficient funds, their vested pension benefits would be paid up to a maximum limit of $750 monthly—but not to exceed 100 percent of their compensation over their highest 5 years.
>
> [III Leg. Hist. 4752]

APPENDIX B

ERISA Effective Dates

Each part of Title I (and of the substantive provisions of Title II) contains a separate section establishing the effective date (or dates) of that part; and even within each part, there are significant differences. The conference report discusses these provisions in meticulous detail. (See III Leg. Hist. 4533-4534 (participation and investing); 4560-4561 (funding); 4592-4593 (fiduciary responsibility); 4647-4649 (termination insurance).) Senator Javits' summary and the various effective dates of the Act (III Leg. Hist. 4762-4764) is set out below.

> Effective dates: First. Reporting and disclosure—The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.
>
> Second. Participation and vesting—changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975.
>
> The general effective date of plan years beginning after December 31, 1975, applies in the case of collective bargained plans in the same manner as in the case of other plans. However, in order that the opening up of the contract to comply with the requirements of this bill will not require negotiations

> with respect to other matters, the conference agreement provides that a collective-bargaining contract, in existence on January 1, 1974, which does not expire until after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet—or exceed—the minimum requirements of this act, without having to be opened for any other purpose.
>
> Finally, the conference substitute provides that if a plan, adopted pursuant to a collective-bargaining agreement in effect on January 1, 1974 contains a clause: First, which provides supplementary benefits which are in the form of a lifetime annuity and refer to not more than one-third of the basic benefit to which the employees generally are entitled; or second, which provides that a 25-year service employee is to be treated as a 30-year service employee, if that right is granted by a contractual agreement which is based on medical evidence as to the effects of working in an adverse environment for an extended period of time—such as workers in foundries or workers in asbestos plants—then the application of the accrued benefit provision of this bill to those benefits is to be delayed until the expiration of the collective-bargaining agreement—but no later than plan years beginning after December 31, 1980.
>
> Third. Funding—Under the conference agreement, in the case of new plans, the funding provisions are to apply to the first full plan year beginning after the date of enactment of the bill. Generally, in the case of plans existing on January 1, 1974, the new funding provisions are to become applicable for plan years beginning after December 31, 1975. In the case of collectively bargained plans—both single employer and multiemployer plans—existing on January 1, 1974, the effective date would be delayed

until the termination of the contract existing on January 1, 1974, but not later than plan years beginning after December 31, 1980.

Fourth. Fiduciary Responsibility—Under the conference agreement, generally, the new fiduciary responsibility rules are to take effect on January 1, 1975. However, with respect to any plan which is covered by plan termination insurance and which terminates before January 1, 1975, the fiduciary rules are to take effect on the date of enactment of the bill.

Under the labor provisions, the Secretary of Labor may postpone until January 1, 1976, the effective date with respect to the requirements for establishing a plan and establishing a trust, the rules regarding liability for breach by a cofiduciary—other than the rules allowing delegation of asset management functions to an investment manager—and the rules prohibiting exculpatory clauses.

The conference agreement also provides transition rules for situations where employee benefit plans are now engaging in activities which do not violate current law, but would be prohibited transactions under the substitute.

One of the transition rules permits the leasing or joint use of property involving a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of the contract), to continue for 10 years beyond that date until June 30, 1984. A similar 10-year transition rule applies to loans or other extensions of credit under a binding contract in effect on July 1, 1974 (and renewals thereof), where the loan remains as favorable as an arm's-length transaction with an

unrelated party and is not prohibited under present law.

The conference agreement allows a plan to sell property, at arm's-length terms, to a party in interest where the property is now under a lease or joint use which qualifies for the 10-year transition rule described above. Sales of this type must occur before July 1, 1984. This transition rule is provided because it appears that such leases are not uncommon and in such cases often a party in interest is the best available buyer.

The conference agreement allows certain fiduciaries to provide multiple services to a plan until June 30, 1977, if he ordinarily and customarily furnishes services on June 30, 1974. Under this provision, such a fiduciary would not be limited to providing those services to plans which he served on that date but he could take on new customers after that date. Under the conference agreement, multiple services also can be provided until June 30, 1977, if they were being provided under a binding contract in effect on July 1, 1974—or under renewals of such a contract.

The conference agreement permits a plan to dispose of excess employer securities or employer real property owned by the plan on June 30, 1974, and at all times thereafter to a party in interest if the holding of such property would violate the rules governing holding of employer securities and real property, and if the sale, and so forth, is at fair market value.

Fifth. Individual Retirement Accounts—The deduction for retirement savings is to be available for taxable years beginning after December 31, 1974.

Sixth. Contributions for the self-employed—In general, the amendments with respect to H.R. 10 plans are to apply to taxable years beginning after December 31, 1973. The rule with respect to the $100,000 contribution base limitation is to apply to taxable years beginning after December 31, 1975, or, if earlier, the first year in which contributions under the plan exceed the deductible contribution limits of present law. The rules facilitating the use of defined benefit plans for the self-employed are to apply to taxable years beginning after December 31, 1975. The rules with respect to excess contributions are to apply to contributions made in taxable years beginning after December 31, 1975, and the rules with respect to premature distributors are to apply to distributions made in taxable years beginning after December 31, 1975. The rule permitting withdrawal of voluntary contributions by owner-employees is to apply to taxable years ending after the date of enactment.

Seventh. Plan termination insurance.—Under the conference agreement, benefits payable by single-employer plans are insured with respect to plans terminated after June 30, 1974. Employers do not, however, incur contingent liability coverage for plans terminating between June 30, 1974, and the date of enactment.

With respect to multiemployer plans, benefits generally are not covered for plans terminating before January 1, 1978. However, the corporation may, in its discretion, cover the benefits of multiemployer plans that had been maintained for five years prior to a termination after the date of enactment, if the Corporation determines that this coverage will not jeopardize the coverage of multiemployer plans terminating after December 31, 1977, and the Corporation may in its discretion cover the benefits for certain nonqualified multiemployer plans before January 1, 1978, if they meet certain specified standards.

Premiums for contingent employer liability insurance arranged by the Corporation may be collected within 3 years of date of enactment. Coverage under such contingent liability insurance will commence after 5 years payment of premiums.